

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. All amendments made herein are consistent with the specification as originally filed. Therefore, no new matter has been added and the amendments comply with 35 USC §132.

I. Restriction

Applicants elect, again, for the Examiner to prosecute on the merits claims 1-11, represented as Group I. In an attempt to expedite the prosecution of the present patent application and to further business objectives, Applicants have cancelled claims 12-16 without prejudice or disclaimer. In view of this, all issues relating to the restriction requirement should now be considered moot.

II. Invention Disclosure Statement

Applicants acknowledge and appreciate that the Examiner has reviewed the Information Disclosure Statement sent by Applicants on November 13, 2003.

III. Drawings

The Examiner objects to Figures 2 and 3 and mentions that the same are deficient since there is no Y axis labeling. Furthermore, the Examiner objects to the drawings as they relate to claim 9 and alleges that all features of claim 9 are not shown in the drawings.

In view of the above, Applicants have amended Figures 2 and 3 consistent with the Examiner's comments. Support for the amendments to Figures 2 and 3 may be found, among other places, in the Figures as originally filed and the specification at the section which describes the examples. Applicants respectfully point out that replacement drawings sheets are filed herewith as are annotated sheets showing in red the changes made to the figures.

Regarding claim 9, the same has been amended in order to further business objectives and to expedite the prosecution of the present patent application. Based on these amendments, Applicants respectfully request that all objections to the drawings be withdrawn and rendered moot.

IV. Specification-Abstract of the Disclosure

The Examiner has objected to the abstract for, among other reasons, the use of legal phraseology. Applicants have amended the abstract in accordance with the Examiner's instructions and Applicants have shortened the same. Therefore, it is respectfully requested that the objection to the specification/abstract be withdrawn and rendered moot.

V. Claim Objection

The Examiner has objected to claim 6 and asserts that the same is not indefinite, but that use of "measurement" to define the system lacks antecedent basis. In view of this, Applicants have amended claim 6 in accordance with the Examiner's comments, and

respectfully request that the objection to the same be withdrawn and rendered moot in light of the amendment.

VI. Rejection Under 35 USC §112, Second Paragraph

The Examiner has rejected claims 7, 8, 10 and 11 under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. With respect to said claims 7, 8, 10, and 11, the Examiner raises issues with respect to antecedent basis. The Examiner's attention is respectfully directed to the amendments of record which address the comments made by the Examiner. Applicants have made a bona fide attempt to comply with the Examiner's helpful suggestions and to further business objectives. In view of this, Applicants request that the rejections to claims 7, 8, 10, and 11 under 35 USC §112, second paragraph be withdrawn and rendered moot.

VII. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-4 under 35 USC §102(b) as being anticipated by Gerome, U.S. Patent No. 5,744,715 (hereinafter, '715). In the rejection, the Examiner mentions, in summary, that the '715 references discloses a tactile acoustic analysis apparatus comprising signal-generating, as well as data collecting, storing, and displaying. The Examiner further mentions that the '715 reference shows a correlating means for acoustic emissions from the skin that is inherently capable of use as a clinical evaluation tool of skin attributes. Based on this, the Examiner believes that the anticipatory rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1, as amended, is directed to an acoustic emission measurement system comprising:

- (a) a means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces;
- (b) a means for collecting, storing and displaying the emissions signal;
- (c) a means for correlating the emission signal with an attribute of the skin wherein the system is used as a clinical tool to evaluate a cosmetic skin care and/or cleansing product.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, that the means for displaying the emission signal comprises a medium selected from the internet, a camera, palm pilot, mobile phone, mobile camera phone and advertising and promotional material that can include a television, magazines, brochures, posters, flyers and handouts. Claim 1 is further defined by additional dependent claims, which claim, among other things, that the system may be used by a consumer, beautician, or professional advisors and that the correlating represents attributes of pores, wrinkles, photo-aging or skin texture.

Applicants wish to point out to the Examiner that the present system is superior in that an acoustic emission signal from a body is generated by contacting skin-on-skin. Direct application of a probe or device onto the body is not required.

Turning to the '715 reference, a tactile-acoustic information detecting and measuring apparatus is described. The tactile-acoustic information detecting and measuring apparatus described in the '715 reference requires that the user utilize a tip 16 of his/her middle finger to come into direct contact with vibrator plate 2. Thus, the teachings of the '715 reference do not even remotely suggest an acoustic emission signal that is generated from a body by contacting skin on one area of the body with skin on the other area of the body to produce skin/skin frictional forces as claimed in the present invention. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention, as now amended, are not found in a single prior art source, namely the '715 reference. In view of this, Applicants respectfully request that the anticipatory rejection be withdrawn and rendered moot.

VIII. Rejection Under 35 USC §102(a)

The Examiner has rejected claims 5, 7, 8 and 11 under 35 USC §102(a) as being anticipated by Alanen et al., U.S. Patent No. 6,762,609 (hereinafter, '609). In the rejection, the Examiner mentions, in summary, that the '609 reference discloses a skin evaluation device comprising a cosmetic composition, water for reducing the appearance of an undesirable skin attribute and an acoustic emission system associated with the cosmetic composition. The Examiner further mentions that the '609 reference discloses a digital means for displaying the emission signal and a means for measuring wrinkles. Regarding claims 8 and 10, the Examiner adds that the same are directed to an intended use and do not result in a structural difference. In view of the above, the Examiner believes that the anticipatory rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention as set forth in independent claim 5 is directed to a cosmetic product selection and/or customization system comprising at least one cosmetic composition for reducing the appearance of at least one undesirable skin attribute; and an acoustic emission system associated with the cosmetic composition, the acoustic emission system having a means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on the other area of the body to produce skin/skin frictional forces; and a means for evaluating current appearance of skin attributes or progress in reducing the appearance of the undesirable attributes with the use of the cosmetic composition.

The invention of claim 5 is further defined by the dependent claims which claim, among other things, that the system comprises a means for displaying the emission signal which comprises a medium selected from the group consisting of the internet, camera, palm pilot, mobile phone, and advertising material. Even further, the invention of claim 5 is further defined in that the system is one which facilitates adherence by a consumer to product usage regimen on the basis of the skin attributes and that the skin attributes are selected from the group consisting of pores, wrinkles, photo-aging or skin texture.

In contrast, the '609 reference is merely directed to a method for measuring the moisture content of skin which includes placing a probe on the skin for measuring the capacitance of the skin. The invention set forth in the '609 reference clearly teaches away from the presently claimed invention, as now amended, since the present

invention is one which is directed to a system that generates an acoustic emission signal from a body by contacting skin on one area of the body with skin on the other area of the body to produce skin/skin frictional forces. A probe for placing on the skin and measuring a signal is what is required in the '609 reference whereby there is no signal generated in the method described in the '609 reference by contacting skin on one area of the body with skin on another area of the body.

Based on the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single prior art source, namely the '609 reference. In view of this, Applicants respectfully submit that an anticipatory rejection has not been established and the same should be withdrawn and rendered moot.

IX. Rejection Under 35 USC §103

The Examiner has rejected claim 6 under 35 USC §103 as being unpatentable over Alanen et al., U.S. Patent No. 6,762,609 in view of Cowie, U.S. Patent No. 5,588,440 (hereinafter, '440). In the rejection, the Examiner mentions, in summary, that the '609 reference describes the claimed invention except for the measuring of a multiple number of skin attributes. Nevertheless, in an attempt to cure the vast deficiencies of the '609 reference, the Examiner relies on the '440 reference for apparently showing simultaneous measuring of multiple skin attributes. In view of this, the Examiner believes it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system described in the '609 reference with the teachings of the '440 reference for the purpose of assessing a distinguishable multiple

number of skin attributes. In view of this, the Examiner believes the rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior system that generates an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces. The '609 reference is directed to a method for measuring skin surface hydration wherein the method utilizes a probe to be placed on the skin for measuring a signal-like capacitance of the skin. As already made of record, the '609 reference clearly teaches away from the presently claimed invention. Claim 6 further defines independent claim 5 by addressing that at least two different skin attributes are to be assessed. Nevertheless, the '440 reference does not cure any of the vast deficiencies of the '609 reference since the former is directed to a method and apparatus for locating and assessing soft tissue lesions which includes a probe for contacting an area of the skin. Like the method of the '609 reference, the method set forth in the '440 reference requires a probe to be contacted on the body whereby the presently claimed invention is directed to a system that generates a signal by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, the Examiner has not established a *prima facie* case of

obviousness and the rejection made under 35 USC §103 must be withdrawn and rendered moot.

X. Rejection Under 35 USC §103

The Examiner has rejected claim 9 under 35 USC §103 as being unpatentable over Alanen et al., U.S. Patent No. 5,762,609 (hereinafter, '609). In the rejection, the Examiner mentions, in summary, that the '609 reference does not disclose expressly packaging the acoustic emission measurement system alongside a cosmetic composition but the Examiner believes that it would have been obvious to a person of ordinary skill in the art to modify the system taught by the '609 reference by packaging the acoustic emission measuring system alongside the cosmetic composition since. Thus, the Examiner believes the rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

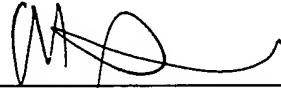
As already made of record, the present invention is directed to a system that generates an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces. Claim 9 further defines independent claim 5 by stating that the acoustic emission measuring system may be placed alongside a container holding the cosmetic composition. Again, and as already made of record, since claim 9 further defines claim 5 and the '609 reference makes uses of a probe to be placed on the skin to measure capacitance, the teachings of the '609 reference do not, even remotely, teach, suggest or disclose the important

and critical limitations set forth in the presently claimed invention. Therefore, the rejection made under 35 USC §103 should be withdrawn and rendered moot.

Applicants submit that all claims now pending should pass to issue. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his or her earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAS', followed by a long horizontal flourish.

Edward A. Squillante, Jr.
Attorney for Applicant(s)
Reg. No. 38,319

EAS:pod
(201) 894-2925

ANNOTATED SHEET

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FIG. 2a

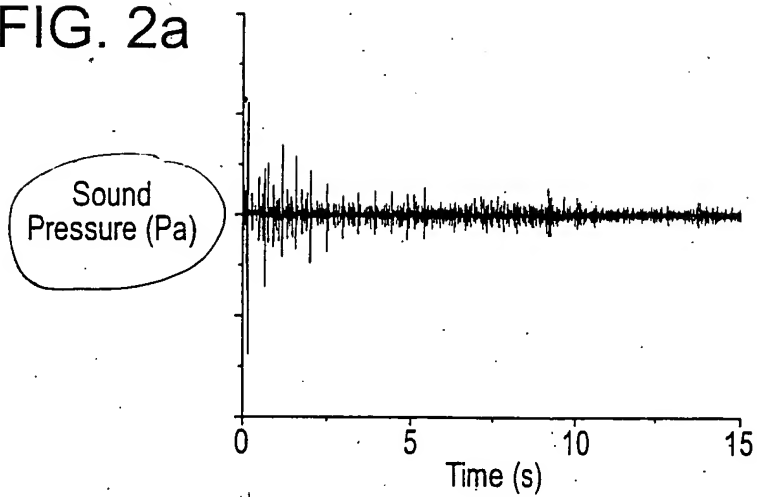


FIG. 2b

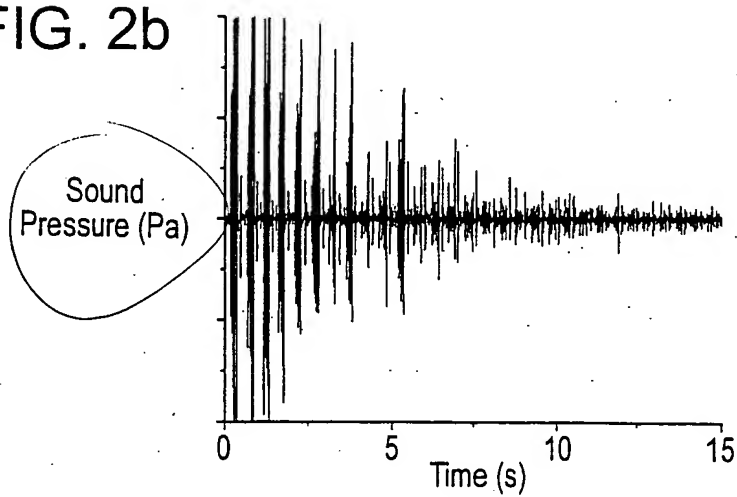
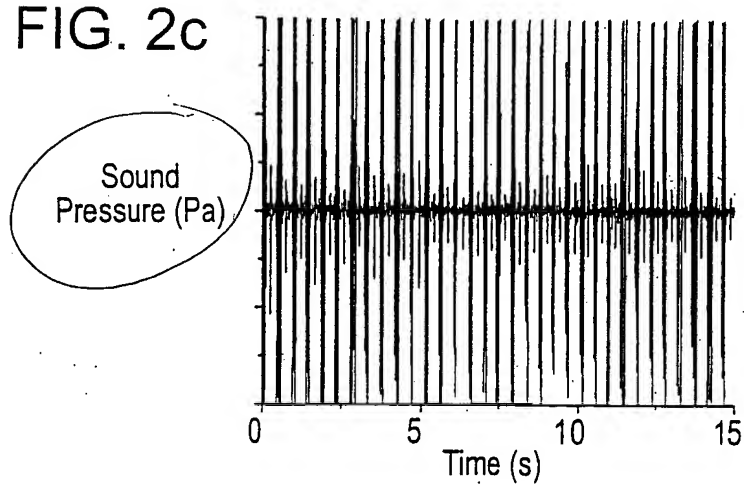


FIG. 2c



ANNOTATED SHEET

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FIG. 3

